IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.81 OF 1997
IN
CHAMBER SUMMONS NO.949 OF 1995
IN
SUMMARY SUIT NO.229 OF 1991

1. Dr.Durgaprasad Shivdutt Rai
Dadhich

2. Dr.(Mrs.) Rama Durgaprasad
Dadhich,

Both of Bombay, Indian Inhabitants,
residing at 37, Sea Queen, Juhu
Road, Bombay 400 049. Appellants
(original Defendant
Nos.2 & 3).

vs.

1. Angelica M.Fernandes alias
Angelica John Dias of Bombay
Indian Inhabitant, residing
at Akshaya Bldg., I.C.Colony, Respondent
3 x Road, Borivali(west), (original plaintiff)
Bombay.

2. The Bombay House Projects Pvt.Ltd.
a company incorporated under the
Companies Act, 1956 having its
registered office at Dadhich
House, Opp.Station Santacruz(E),
Bombay 400 055.

3. Lila Shankar Aesopa

all of Bombay Hindu Inhabitant,
residing at 37, Sea Queen,
Juhu Road, Bombay 400 049. Respondents
(original defendant nos.
1 & 4.)

Mr.Anis Kazi i/b.Mr.R.M.Tiwari for the appellants.

Mr.Manoj Dalvi i/b.M/s.Banatwala & Co. for the respondents.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 21st November 2005

ORAL JUDGMENT (Per R.M.Lodha,J.).

Heard.

2. On 22.02.1993 an exparte decree came to be passed against the four defendants viz. (1) The Bombay House Projects Pvt.Ltd., (2) Dr.Durgaprasad Shivdutt Rai Dadhich, (3) Dr.(Mrs) Rama Durgaprasad Dadhich and (4) Lila Shankar Aesopa. It appears that the present appellants who are defendants 2 and 3 took out notice of motion for setting aside the exparte decree. The said notice of motion is reported to have been dismissed.

3. In execution of the exparte decree, the following properties were attached:

(i) furniture, fixtures and all other movable attachable articles belonging to and in the possession of defendant no.1 lying and being at Dadhich House, opposite Railway station, Santacruz (E), Bombay;

(ii) fixtures and furnitures, T.V. VCR and all other attachable articles belonging to and in possession of the defendant no.4 being at 37, Sea Queen, Juhu Road, Bombay 400 049;

(iii) right, title and interest of defendant no.1 in their ownership business premises and lying and being at Dadhich House opp. Railway Station Santacruz (E), Bombay 400 055 and

(iv) right, title and interest of defendant no.4 in his

ownership residential premises lying and being and situate at 37, Sea Queen, Juhu Road, Bombay 400049.

4. The defendants 2 and 3 took out chamber summons for raising attachment of the aforesaid properties which came to be dismissed by the learned chamber Judge on December 13, 1996 giving rise to the present appeal.

5. In the short order whereby the chamber summons took out by the defendants 2 and 3 came to be dismissed, the learned Chamber Judge noticed that the applicants failed to establish that the attached property belonged to them.

6. From the available material, it is apparent that the registered office of the first defendant-company is at the Dadhich House. What has been attached under the Warrant of Attachment interalia is furniture, fixtures and other movable attachable articles belonging to and in the possession of defendant no.1-company lying at their registered office and the right, title and interest of the defendant no.1-company in the ownership business premises at the Dadhich House. The raising of the attachment of the said property at the instance of the defendants 2 and 3 did not arise as the said properties belonged to the first defendant.

7. As regards the movable lying in the flat situate at 37, Sea Queen, Juhu Road, Bombay, which have been

attached under the warrant of attachment, nothing has been produced by the defendants 2 and 3 to show that the said movable properties belonged to them. In so far as the attachment of residential premises at 37, Sea Queen, Juhu Road, Bombay is concerned, it is seen from the warrant of attachment that what has been attached is the interest of the defendant no.4.

8. In the aforesaid fact situation, the learned Chamber Judge cannot be said to have committed any error in observing that the applicants-defendants 2 and 3 have failed to show that the attached property belonged to them.

9. There is no merit in the appeal.

10. We, accordingly, dismiss the appeal with no order as to costs.

(R. M. LODHA, J.)

(D. G. KARNIK, J.)